

# Section-by-Section of Senate Banking Committee Leaders’ Bipartisan Housing Finance Reform Draft

**Sec.1. Short Title; Table of Contents.**

**Sec.2. Definitions.**

## **TITLE I—ELIMINATION OF FANNIE MAE AND FREDDIE MAC**

**Sec.101. Elimination of Fannie Mae and Freddie Mac.**

This section provides that over time, FMIC will eliminate, dissolve and repeal the charters of Fannie Mae and Freddie Mac.

## **TITLE II—FEDERAL MORTGAGE INSURANCE CORPORATION**

**Sec.201. Establishment.**

Six months after enactment, the Federal Mortgage Insurance Corporation (FMIC) is created. FMIC is an independent agency responsible for providing insurance on mortgage-backed securities that meet the conditions spelled out in Title III, and facilitating the broad availability of mortgage loan credit and secondary market financing through fluctuations in the business cycle for eligible single-family and multifamily lending across all regions, localities, institutions, property types, including housing serving renters, and eligible borrowers. FMIC will supervise guarantors, aggregators, servicers, and private mortgage insurers, as well as the Federal Home Loan Banks, the Securitization Platform, and the small lender mutual.

**Sec.202. Management of Corporation.**

This section lays out the structure of FMIC’s management. FMIC will be run by a 5-member bipartisan board of directors, each of whom will be appointed by the President with the advice and consent of the Senate for 5-year terms. Of those 5 members, the President will appoint one to serve as the Chairperson and one to serve as the Vice Chairperson. The initial terms of 3 of the board members will be shorter to permit staggered terms for board members in the future. This section also requires board-level decisions to be made by a majority vote of all board members.

**Sec.203. Advisory Committee.**

This section establishes a 9-member Advisory Committee to assist the FMIC board and the Office of Consumer and Market Access (OCMA). The FMIC Chairperson appoints the members of the Advisory Committee, subject to the requirement that Committee is made up of members with diverse experiences including those related to mortgage origination, credit unions, community banking, private mortgage insurance, consumer protection, multifamily housing, affordable rental housing, and asset management. The Advisory Committee will report to the FMIC board and the OCMA on several areas of the housing market described in this section.

**Sec.204. Office of the Inspector General.**

This section creates an Office of the Inspector General within FMIC to oversee FMIC and also transfers the powers of the FHFA Inspector General into this office. The FMIC IG will be funded by FMIC.

**Sec.205. Staff, experts, and consultants.**

FMIC employees will receive compensation and benefits like those of FHFA, the federal banking agencies, the National Credit Union Administration Board, the Office of Financial Research, the Bureau of Consumer Financial Protection, the Commodity Futures Trading Commission, and the Farm Credit Administration. FMIC employees are not subject to the general schedule pay scale.

**Sec.206. Reports; testimony; audits.**

Once the new mortgage finance system is fully operational, FMIC is required to submit annual reports to Congress describing the Corporation’s activities over the previous year. The contents of the report must include an update on the health of the Mortgage Insurance Fund (MIF) and the private-label mortgage-backed securities market, as well as the OCMA’s report on underserved markets served by FMIC’s covered securities, among other requirements. The FMIC Chairperson must also testify annually before Congress about the annual report.

This section also requires the Comptroller General of the United States to conduct an annual audit of FMIC and the MIF and submit to Congress a report on the results.

**Sec.207. Specific offices.**

FMIC will have authority to create any offices it determines necessary, but this section requires FMIC to establish an Office of Underwriting, and Office of Securitization, and Office of Federal Home Loan Bank Supervision. The minimum functions of each of these offices is also described within this section.

**Sec.208. Office of Consumer and Market Access.**

This section establishes the Office of Consumer and Market Access (OCMA) within the FMIC and outlines the functions and responsibilities of the office. These include, but are not limited to: administering the Market Access Fund; monitoring national and regional markets to identify underserved markets, communities and consumers; assisting market participants and Federal agencies with efforts to meet the housing needs of underserved markets; producing an annual report assessing the covered securities market, including the extent to which it is providing liquidity to eligible borrowers in underserved markets; and conducting annual studies on incentives to encourage primary market lending to underserved markets.

**Sec.209. Office of Multifamily Housing.**

This section creates the Office of Multifamily Housing within FMIC to oversee the activities related to multifamily housing.

**Sec.210. Equitable access for lenders and borrowers.**

The section directs FMIC to support the primary mortgage market to help ensure that all eligible borrowers have equitable access to mortgage loan credit, including underserved segments of the primary mortgage market.

To accomplish this, FMIC must issue regulations to identify and define underserved primary mortgage market segments in which lenders and eligible borrowers lack equitable access to the secondary mortgage market. Examples of underserved market segments may include traditionally underserved areas, including rural and urban areas; manufactured housing; small balance loans; low- and moderate-income creditworthy borrowers; and affordable rental housing.

Each approved guarantor and approved aggregator in the government-guarantee system will submit an annual public report describing its actions to provide credit to the underserved market segments identified and defined by FMIC. The annual report will be approved by the board of directors and signed by the chief executive officer of the approved guarantor or approved aggregator.

FMIC may not influence an approved guarantor’s or approved aggregator’s selection of eligible mortgage loans to guarantee or purchase in order to fulfill FMIC’s obligation to ensure equitable access under this title.

**TITLE III—DUTIES AND RESPONSIBILITIES OF THE FMIC**

***Subtitle A—Duties and Authorities***

**Sec.301. Duties and responsibilities.**

This section spells out the duties and responsibilities of FMIC.

**Sec.302. Standard form credit risk-sharing mechanisms.**

This section authorizes FMIC to establish standards for first loss credit risk-sharing mechanism that will absorb the first 10 percent of mortgage losses on FMIC insured mortgage-backed securities. In approving first loss risk-sharing structures, FMIC may consider a variety of alternatives, including structures similar to those currently used by the enterprises. In addition, risk-sharing mechanisms must satisfy several criteria, including minimizing the cost to the taxpayer, accommodating broad mortgage availability, preventing undue risk to the MIF and avoiding impairing the TBA market. FMIC may also approve risk-sharing structures used by guarantors to manage mortgage credit risk related to guarantees on FMIC insured mortgage-backed securities. In addition, there will be an annual report to Congress on the risk-sharing structures considered and approved.

**Sec.303. Insurance; Mortgage Insurance Fund.**

This section establishes the Mortgage Insurance Fund, which will fund insurance claims on the principal and interest of FMIC-backed securities if losses exceed the private market first loss positions. The MIF will be funded initially by assessments on Fannie Mae and Freddie Mac and sustained in the future by fees on FMIC-backed securities. This section sets a target for the MIF reserve ratio of 1.25 percent of the unpaid principal balance of the covered securities within the first 5 years, and 2.5 percent within 10 years and thereafter, thus ensuring that the MIF has sufficient funds to provide a backstop to the market while protecting the taxpayer.

**Sec.304. Loan limits; Housing Price Index.**

This section establishes the maximum original principal obligation of eligible single-family mortgage loans that may collateralize FMIC-backed securities. FMIC must annually adjust these limits based on changes to housing prices in different geographic areas. FMIC may not reduce the loan limits.

**Sec.305. Authority to protect taxpayers in unusual and exigent market conditions.**

If the Corporation, the Chairman of the Federal Reserve Board of Governors and the Secretary of the Treasury, in consultation with the Secretary of Housing and Urban Development, determine that unusual and exigent circumstances threaten mortgage credit availability within the U.S. housing market, FMIC may provide insurance on covered securities that do not meet the requirements under section 302 including those for first loss position of private market holders. FMIC may also establish provisional standards for approved entities. FMIC may exercise these authorities for an initial period of six months and for two additional nine month periods within any given three-year period. The second exercise requires the affirmative vote of two-thirds of the Board of Directors, in addition to the written agreement of the Chairman of the Federal Reserve Board of Governors and the Secretary of the Treasury, in consultation with the Secretary of Housing and Urban Development, while the third exercise requires the affirmative vote of two-thirds of the Board of Directors, and two-thirds of the Federal Reserve Board, in addition to the written agreement of the Chairman of the Federal Reserve Board of Governors and the Secretary of the Treasury, in consultation with the Secretary of Housing and Urban Development.

After any exercise of this authority, FMIC would establish a normalization timeline for approved entities to meet the regular standards they would otherwise be subject to, and establish a program to sell the first loss position to the private market to minimize losses to the MIF.

In addition, in the event of a significant nationwide decline in home prices, FMIC may permit the transfer of guarantees of eligible mortgage loans that secure covered securities if such eligible loans are refinanced regardless of the value of the underlying collateral. This authority is granted with an affirmative vote of two-thirds members of the Board of Directors for a six month period, extended for additional six month periods with the affirmative approval of two-thirds of the Board of Directors.

Bailouts to financial market entities to avoid insolvency or to those entities already insolvent are strictly prohibited.

**Sec.306. General powers.**

FMIC has power to enter into, execute, and perform contracts, leases, cooperative agreements, and other transactions. Additionally, FMIC will have the authority to lease, purchase, or acquire any property. It will

appoint and supervise personnel, as well as establish and maintain divisions, units, or other offices. FMIC is authorized to collect fees on regulated and approved entities and the Federal Reserve banks will serve as depositories, custodians, and fiscal agents.

**Sec.307. Exemptions.**

This section exempts FMIC-backed securities from SEC registration, credit risk retention requirements, and the definition of a commodity pool. This section also provides that credit-risk sharing mechanisms approved by FMIC will not be subject to the SEC's conflict of interest rules for asset-backed securities.

**Sec.308. Regulatory consultation and coordination.**

Under Section 308, FMIC is permitted to consult, and required to coordinate with, Federal and State regulatory agencies in carrying out the requirements of the Act. To the extent possible, FMIC must seek to avoid duplication or conflicts with the regulatory activities of other agencies. Section 308 also permits information sharing between FMIC and other Federal and State agencies.

**Sec.309. Authority to issue regulations.**

This section provides FMIC general rule-writing authority to carry out this Act and requires the Chairperson of FMIC to consider differences between Federal Home Loan Banks, Fannie Mae, and Freddie Mac when writing regulations or taking formal or informal actions. FMIC must also set standards for the purchase of force-placed insurance by approved entities, private market holders, or members of the Securitization Platform.

This section also requires FMIC to establish capital and solvency standards for approved guarantors, approved multifamily guarantors, and approved aggregators that are not affiliated with an insured depository institution (IDI) (aggregators who are IDIs would be subject to bank capital rules).

FMIC is required to write rules in a manner that promotes competition, and they will issue supplemental capital rules for large guarantors and aggregators to mitigate system risk. FMIC must also establish market-share limitations for approved aggregators and approved guarantors that will take effect if FMIC determines the supplemental capital standards are insufficient.

This section requires FMIC offices to develop standards to protect personally identifiable information, and limits the sharing of this information within FMIC and with other Federal or State agencies unless necessary and appropriate to comply with this Act, the records are relevant to an investigation, or the Federal or State agency satisfies the information-sharing conditions established by FMIC.

**Sec.310. Equivalency in the protection of the Mortgage Insurance Fund.**

This section requires FMIC to seek to ensure equivalent loss absorption capacity between approved credit risk-sharing mechanisms and capital standards for approved guarantors.

***Subtitle B—Approval and Supervision of Approved Entities for Single-family Activities***

**Sec.311. Approval and supervision of guarantors.**

This section describes FMIC's authority to approve, supervise, and resolve guarantors who back securities insured by FMIC. FMIC's supervisory and resolution authorities are modeled after the FDIC's safety and soundness authority over IDIs. FMIC must issue approval and prudential standards for the ongoing operation of approved guarantors and may require reports from and conduct on-site examinations of approved guarantors. For a critically undercapitalized approved guarantor, FMIC will have resolution authority, which permits FMIC to act as conservator or receiver. Also, like the FDIC's authority over IDIs, FMIC will also have authority to take enforcement actions against approved guarantors for violations of the Act.

FMIC is also required to include in its capital and solvency standards requirements that approved guarantors hold 10 percent capital as a protection against losses that may be incurred during a period of economic stress. Approved guarantors with over \$10 billion in assets will be subject to FMIC-conducted stress tests.

**Sec.312. Approval and supervision of aggregators.**

This section describes FMIC's authority to approve, examine, and resolve aggregators who deliver mortgages to the platform for securitization as FMIC-insured securities. FMIC must issue approval standards for all aggregators seeking to become approved aggregators. Some IDIs may apply to be approved aggregators and, in recognition of the federal banking agencies' safety and soundness supervision of IDIs, this section requires FMIC to create different prudential standards for approved aggregators based on their relationship with an IDI. FMIC's supervisory and resolution authorities over approved aggregators are modeled after the FDIC's safety and soundness authority over IDIs, though the authorities are tailored based on the approved aggregator's affiliation with an IDI. FMIC will also have authority to take enforcement actions against approved aggregators for violations of the Act, similar to the FDIC's enforcement authority over IDIs.

FMIC may require reports from and conduct on-site examinations of approved aggregators that are not affiliated with an IDI, in the same way that the FDIC may require reports and examine IDIs. FMIC must make use of existing reports, exams, and inspections of approved aggregators that are affiliated with an IDI in order to minimize the duplication of examinations by federal regulators. If FMIC determines those reports and exams are insufficient, FMIC may require reports from and conduct on-site examinations of approved aggregators to the same extent as the Federal Reserve System may with regard to subsidiaries of bank holding companies.

FMIC must include in its capital and solvency standards requirements for approved aggregators that are not affiliated with an IDI. Approved aggregators with over \$10 billion in assets will be subjected to FMIC-conducted stress tests. FMIC is authorized to act as conservator or receiver for an approved aggregator that is not affiliated with an IDI and fails to meet the capital standards established by FMIC.

Approved guarantors with over \$10 billion in assets will be subject to FMIC-conducted stress tests. If an approved guarantor is critically undercapitalized, FMIC is authorized to serve as conservator or receiver for the guarantor.

This section also authorizes each Federal Home Loan Banks to form a subsidiary that may serve as an approved aggregator.

**Sec.313. Approval of private mortgage insurers.**

This section describes FMIC's authority with regard to private mortgage insurers (PMIs) who guarantee eligible mortgage loans collateralizing securities insured by FMIC. FMIC must issue standards for approved PMIs. If FMIC has substantial reason to believe an approved PMI has violated this Act or FMIC's regulations, or that the approved PMI poses a threat to the MIF, FMIC may examine or review an approved PMI. Once every two years, FMIC must conduct an on-site examination of any approved PMI that has not been examined by an appropriate state insurance regulator during that same time period.

FMIC will also have authority to take enforcement actions against approved PMIs for violations of the Act, and must notify the appropriate state insurance regulator after taking such action.

FMIC must recommend to the state insurance regulator resolution of a failing or critically undercapitalized approved PMI. If the state regulator does not act within 60 days after the Corporation provided its recommendation, the Corporation may act in place of the state regulator and place the approved PMI into the appropriate state liquidation process.

**Sec.314. Approval of servicers.**

This section authorizes FMIC to establish approval standards for servicers of eligible mortgage loans. FMIC's approval process must not disadvantage small servicers. FMIC must conduct an on-site examination of an approved servicer once every two years. In addition, FMIC may examine or review the status of any approved servicer at any time if FMIC has substantial reason to believe the approved servicer has engaged in a material violation or pattern of violations of this Act or FMIC's regulations. Each approved servicer must submit an annual

certification, in writing, attesting that the approved servicer is complying with FMIC's standards for approved servicers. An approved servicer that submits a false or misleading self-certification shall be subject to civil enforcement penalties used by the FDIC in its ongoing supervision of IDIs.

FMIC is authorized to require approved servicers failing to meet FMIC's standards to transfer their servicing rights for any loan or pool of loans, and may also suspend or revoke the approval status of an approved servicer. FMIC must also develop a process by which a holder of a first loss position in a FMIC-insured security may petition FMIC for a change of the approved servicer.

Servicers approved by Fannie Mae or Freddie Mac on the date before enactment of this Act are grandfathered in as approved servicers, but remain subject to the ongoing supervision and enforcement provisions for all approved servicers.

This section also raises the small servicer exemption threshold for both CFPB and FMIC servicer standards and requires FMIC to conduct a study on servicer compensation standards for non-performing single-family mortgage loans.

To reduce regulatory burden and minimize conflict, the Corporation must coordinate with federal and state regulators in setting the servicing standards.

#### **Sec.315. Authority to establish and approve small lender mutuals.**

This section authorizes FMIC to establish and capitalize a mutually-owned company to facilitate access to the secondary market by smaller lenders. The small lender mutual will provide a cash window for originators to sell individual loans or pools of loans, and shall be an approved aggregator if performing any of the functions under section 312.

Membership in the small lender mutual will be limited to IDIs with less than \$500 billion in total assets, non-depository institutions with assets that exceed \$2.5 million and that originate less than \$100 billion in loans annually, Federal Home Loan Banks, and other small lenders that satisfy the membership requirements established by the mutual.

The small lender mutual will be owned and operated by its members. Governance is vested in a board of 14 directors chosen by membership, and the operation and management of the small lender mutual will be carried out by the board. Membership fees are set by the board, and must be equitably assessed and may not discriminate based on member size, loan volume, composition, or business line.

FHFA may transfer to the small lender mutual technology to help the mutual carry out its duties. FMIC will determine the amount of initial funding for the small lender mutual, which the small lender mutual will pay back.

#### **Sec.316. Supervisory actions related to capital and solvency.**

FMIC is required to establish capital classifications for approved guarantors, approved multifamily guarantors, and approved aggregators that are not insured depository institutions or their affiliates regarding the levels of capital to be maintained. These classifications are: well-capitalized, adequately capitalized, undercapitalized, significantly undercapitalized, and critically undercapitalized.

In certain situations enumerated in this section, FMIC may lower the capital classification of an approved guarantor, approved multifamily guarantor, or approved aggregator that is not an insured depository institution or its affiliate.

Approved guarantors, approved multifamily guarantors, and approved aggregators that are not IDIs or their affiliates that are classified at a level other than well capitalized are required to take varying degrees of action to improve their capital positions. These actions include: submitting and abiding by capital restoration plans; restricting asset growth; refraining from acquiring an interest in any entity or engaging in new activities without

FMIC permission; facilitating close monitoring of the entity by FMIC; limiting or reducing obligations, including off-balance sheet obligations; raising new capital; and improving management via new elections for boards of directors or dismissal of directors or executive officers.

If an approved guarantor, approved multifamily guarantor, or approved aggregator that is not an IDI is classified as critically undercapitalized, FMIC is required to place the entity into receivership.

**Sec.317. Acquisitions and operations of covered entities.**

This section requires FMIC to approve any change in control at an approved guarantor, approved multifamily guarantor, and an approved aggregator that is not affiliated with an IDI. This section also limits the ability of approved guarantors and approved multifamily guarantors from engaging in other business lines without FMIC's prior approval.

*Subtitle C—Securitization Platform and Transparency in Market Operations*

**PART I—Securitization Platform**

**Sec.321. Establishment of the Securitization Platform.**

This section requires FMIC to establish a Securitization Platform (“Platform”) as a utility owned and operated for the benefit of its members that may be either a nonprofit corporation or another cooperative entity. This sections also provides FMIC the authority to regulate and supervise the Platform, requires FMIC to file incorporation papers within 1 year after the agency transfer date and gives FMIC discretion as to which State to file the incorporation documents.

The section also gives FMIC the ability to transfer initial funds to operate the Platform. It provides FHFA the ability to transfer or sell property to the Platform, including technology developed by the enterprises for the common securitization platform, provided that such transfers are sales made in a manner consistent with legal obligations to provide maximum returns to the senior preferred shareholders of the enterprises. FMIC is required to establish back-up capacity for the Platform. The section also permits FMIC to delegate the Platform responsibilities to other entities if the Platform is not operational by the System certification date.

**Sec.322. Management of the Platform.**

This section requires the FMIC Board of Directors to, within 180 days following the filing or acceptance of the Platform incorporation papers, appoint 5 initial Platform Directors to carry out the functions of the Platform, draft the initial bylaws, establish initial membership and fee requirements, and organize the election of the elected Platform Board from the Platform members. The initial Platform Board is given 1 year terms, however, FMIC is given the ability to extend the term for up to 3 additional years, after which time the elected Platform Board will be elected in a manner that reflects the diverse range of Platform members. The section creates a 9-member elected Platform Board, 1 of whom is independent, and all of whom shall have equal votes. The section also creates staggered terms of office for the Platform Board, and directs the appointment of a Chairperson of the Platform Board. The Platform Board may reorganize itself if the Platform Directors and FMIC determine that a different organizational structure will better achieve the purposes and obligations of the Act.

**Sec.323. Membership in the Platform.**

This section directs the Platform Directors to establish membership standards for approved entities, and permits the Platform Directors to approve as Platform members any mortgage aggregators, mortgage guarantors, mortgage originators, FHLBs, small lender mutual, or any other market participant approved by the Platform.

**Sec.324. Fees.**

This section permits the Platform Directors to asses and collect fees to operate the Platform, including an initial fee for membership and a uniform usage fee based on a member's usage of services as measured by the total principal balance of the loans or mortgage-backed securities issued by or through the Platform. The Platform Directors may establish tiered usage fees to reduce barriers to entry for the Platform for certain entities and to

establish differential usage fee structures for covered and noncovered securities. The section provides that the usage fees adopted by the Platform Directors will go into effect within 60 days unless such fee structures are disapproved by FMIC.

**Sec.325. Purposes and obligations of the Platform.**

This section provides the general purposes, powers, and functions of the Platform. The Platform powers include, among other authorities, the ability to: issue a standardized covered security insured by FMIC; develop standardized securitization documents for all covered securities; develop standardized documents for servicing and loss mitigations standards for all covered securities; develop any supplemental required contractual terms for contracts for noncovered securities issued by or through the Platform; develop optional standardized securitization documents tailored for noncovered securities issued by or through the Platform; verify that the eligible mortgage loans and securities collateralized by eligible mortgage loans purchased and received meet the requirements for covered securities under this Act; verify that the noneligible mortgage loans and securities not collateralized by eligible mortgage loans purchased and received by the Platform meet the requirements for noncovered securities under this Act; purchase or receive eligible and noneligible mortgage loans, both individual and pooled; issue all covered securities, noncovered securities from members of the Platform, and noncovered securities that are pooled from other approved sources; perform bond administration, data validation, and reporting; issue standardized To-Be-Announced securities; and issue securitizations for multifamily loans if the Platform Directors issue a determination that it would be desirable and practical for the Platform to be used to issue multifamily securitizations.

The section prohibits the Platform from: guaranteeing any mortgage loans or mortgage-backed securities; assuming or holding mortgage loan credit risk; operating a cash window; undertaking the issuance of any mortgage backed securities unless the first loss credit risk is already held by a private entity; owning or holding any mortgage loans or mortgage-backed securities for investment purposes; making or being a party to any representation and warranty agreement on any mortgage loans; and taking lender representation and warranty risk. The section also requires the Platform to develop the ability to issue, and issue standardized securities for single-family covered securities within 2 years following the election of the Platform Directors. The section also states that the Platform may develop an ability to issue standardized securities for single-family noncovered securities.

**Sec.326. Uniform securitization agreements for covered securities and required contractual terms for noncovered securities.**

This section mandates that the Platform develop standard uniform securitization agreements for all covered securities to be issued by or through the Platform. The section requires that the uniform standardization agreements detail obligations relating to, among other areas: pooling and servicing; loss mitigation; minimum representations and warranties; indemnification and remedies; requirements of indenture; duties of trustees; and uniform standards for actions or omissions to act that comprise a violation of reps and warranties under the agreements.

The section requires that all contracts for noncovered securities issued through the Platform include a set of contractual terms relating to the obligations of the parties to each contract that include terms regarding: pooling and servicing; loss mitigation procedures; representations and warranties; indemnification and remedies; and duties of trustees. The section permits the Platform Directors to also develop optional uniform securitization agreements for use by noncovered securities that are issued through the Platform.

**Sec.327. Approval and standards for collateral risk managers.**

Under Section 327, FMIC will develop standards for Collateral Risk Managers, a new party that can play a role in the management of mortgage-backed securities. Collateral Risk Managers will work with servicers and trustees to manage troubled mortgages and to comply with requirements in securitization documents, with the goal of providing better accountability and transparency for investors in mortgage-backed securities.

## **PART II—Transparency in Market Operations**

### **Sec.331. Review of loan documents; disclosures.**

This section requires FMIC, in consultation with the SEC, to issue a rule that would enable private market investors, in connection with the first loss position on a covered security, to have access to documents relating to the mortgages backing that covered security, as well as servicing reports. Market participants would also be required to disclose material information that a reasonable investor would need to make an informed investment decision, including access to documents and servicing reports related to the loans collateralizing the security.

### **Sec.332. Investor immunity.**

This section protects market participants that have taken a first loss position in a covered security, or are otherwise invested in any covered security from liability in suits based on claims that the underwriting standards of loans collateralizing the covered securities, the representations and warranties of such loans, or the terms of any uniform securitization agreement under Section 326 were not satisfied.

### **Sec.333. National mortgage database.**

This section transfers to FMIC the existing national mortgage database created by FHFA and the CFPB. FMIC and the CFPB must minimize conflicts and duplication with existing mortgage data reporting requirements, ensure the data is transparent and easily accessible by the public, and take privacy precautions.

### **Sec.334. Working group on electronic registration of mortgage loans.**

Within 6 months of the creation of FMIC, the Corporation must establish a working group to study the necessity and feasibility of a national electronic mortgage registry for all single-family and multi-family mortgage loans, as well as state-based alternatives.

FMIC must consider the existing state and local real property recordation systems, including the impact on state revenues, and this section allows for the states to establish electronic mortgage registries. If the states fail to establish the registries within a specified period of time, FMIC will have the authority to establish a national electronic mortgage registry and will be required to coordinate with state and local agencies.

### **Sec.335. Multiple lender issues.**

This section requires notification of the holder of the eligible mortgage before a subsequent lien on that property may become enforceable. This section only applies if the subsequent lien has a loan-to-value ratio of 80 percent or more.

### **Sec.336. Required harmonization of standards within eligible mortgage criteria.**

This section mandates that FMIC coordinate with the Consumer Financial Protection Bureau (CFPB) to ensure that minimum standards governing eligible single-family mortgage loans are, as much as possible, similar to rules established by the CFPB regarding the presumption of the ability to repay. Any modifications to the standards must still match the standards of an eligible mortgage loan and must not negatively impact the MIF.

FMIC is also mandated to submit an annual report that details any changes, as well as the economic analysis to support those changes, to the minimum standards and highlight the differences between the new minimum standards and the ability to repay rules previously established by the CFPB.

## **TITLE IV—FHFA AND FMIC TRANSITION**

### **Sec.401. Definitions.**

### **Sec.402. FHFA transition.**

Six months following enactment, FHFA, including its current functions, powers, and duties, is transferred as an independent office within FMIC. FHFA will continue to be responsible for supervision and regulation of the enterprises and the Federal Home Loan Banks. The FHFA Director at the time of the transfer continues in that

role. Until a FMIC Chairperson is nominated by the President and confirmed by the Senate, the FHFA Director will serve as the Transition Chair of FMIC.

**Sec.403. Transfer and rights of employees of the FHFA.**

Upon the transfer of FHFA to an independent office within FMIC, all existing FHFA employees in good standing are transferred to FMIC. After a FMIC Chairperson is nominated by the President and confirmed by the Senate, in consultation with the FHFA Director, the FMIC Chairperson may reassign these employees elsewhere in FMIC as necessary.

**Sec.404. Transition Committee.**

Upon enactment, a Transition Committee is formed to develop a comprehensive plan for the transition to the new housing finance system, as well as to advise the FMIC. The Transition Committee is initially composed of the FHFA Director, the FDIC Chairman, and the Comptroller of the Currency. Upon confirmation, the FMIC Chairperson and any members of the FMIC Board of Directors are also members of the Transition Committee. The FHFA Director is the Chairperson of the Transition Committee until a FMIC Chairperson is confirmed, at which point he or she becomes Chairperson of the Transition Committee. The Transition Committee is dissolved once both a FMIC Chairperson has been confirmed and the transition plan has been approved and submitted to Congress.

**Sec.405. Transition assessments.**

From enactment until the date on which the enterprises are prohibited from engaging in new business, the enterprises will be charged annual assessments. Before FMIC is created, FHFA shall use the assessment funds only to capitalize the MIF.

After it is created, FMIC may use these assessments to capitalize the MIF and for its administrative costs, as well as to establish the Securitization Platform, the Small Lender Mutual, and multifamily guarantors.

**Sec.406. Transfer of powers and duties on the system certification date; continuation and coordination of certain actions.**

On the date on which the enterprises are prohibited from engaging in new business, FHFA will cease to exist as an independent office within FMIC, and all FHFA functions, powers, and duties will be vested in FMIC.

**Sec.407. Technical and conforming amendments relating to abolishment of FHFA.**

Relevant references to FHFA and the FHFA Director in Federal law are changed to reference FMIC and the FMIC Chairperson upon the system certification date.

**Sec.408. Repeal of mandatory housing goals.**

On enactment, the single-family and multifamily housing goals with respect to mortgage purchases of the enterprises are repealed. Covered entities must comply with the Fair Housing Act and the Equal Credit Opportunity Act.

**TITLE V—IMPROVING TRANSPARENCY, ACCOUNTABILITY, AND EFFICACY WITHIN AFFORDABLE HOUSING**

**Sec.501. Affordable housing allocations.**

This section establishes an initial and incentive-based fee structure to support the Housing Trust Fund, the Capital Magnet Fund, and the newly-created Market Access Fund, and authorizes FMIC to collect these fees. This section also describes how these fees shall be allocated to the funds.

To provide market-based incentives to encourage approved guarantors, approved multifamily guarantors, and approved aggregators to serve underserved market segments, FMIC may charge an approved guarantor, approved multifamily guarantor, and approved aggregator a different fee based on: the performance of that entity in serving underserved areas relative to its approved peers, the performance of that entity relative to primary market

originations in underserved areas, and the degree to which each market segment is underserved. The incentive fee structure authorized by this section must be established by FMIC regulation, and must average 10 basis points across all outstanding covered securities.

FMIC may also use funds from the Market Access Fund to provide additional incentives to serve underserved market segments.

**Sec.502. Housing Trust Fund.**

This section makes changes to the Housing Trust Fund to require a set-aside for federally-recognized tribes, which would be administered by HUD through a competitive grant process aimed at meeting the housing challenges facing Indian Country. This section also increases the minimum allocation a state will receive under the Housing Trust Fund.

**Sec.503. Capital Magnet Fund.**

This section clarifies that the Capital Magnet Fund must consider tribal housing needs.

**Sec.504. Market Access Fund.**

This section creates a new Market Access Fund to support innovation in responsible lending products, education, underwriting, and servicing that will help address the homeownership and rental housing needs of underserved markets and populations. FMIC's Office of Consumer and Market Access will be responsible for maintaining and administering the Market Access Fund.

**Sec.505. Additional taxpayer protections.**

This section clarifies that grant money received from the Housing Trust Fund, Capital Magnet Fund, or Market Access Fund cannot be used for certain political activities, but also clarifies that this prohibition does not apply to HUD-approved housing counseling services, financial literacy education, or construction-related expenses.

## **TITLE VI—TRANSITION AND TERMINATION OF FANNIE MAE AND FREDDIE MAC**

**Sec.601. Minimum housing finance system criteria to be met prior to system certification date.**

The date on which the enterprises are prohibited from engaging in new business is defined as the date on which 1) the FMIC Board of Directors certifies that FMIC is able to undertake all of its duties; and 2) certain minimum housing finance system criteria have been satisfied. These minimum criteria are:

- The Department of the Treasury has advised the Board of Directors that laws and contracts are in place to provide for compensation to the Department for its support of the enterprises and the housing finance system. The Securitization Platform is operational and able to issue standardized securities for the single-family covered securities market.
- At least one small lender mutual is operational and able to undertake its duties.
- A sufficient number of approved guarantors, approved aggregators, approved private mortgage insurers, and approved servicers exist to assume first loss positions and generate a substantial volume of secondary mortgage market activity.
- Multiple approved multifamily guarantors exist and provide sufficient multifamily financing in primary, secondary, and tertiary geographical markets.

FMIC may begin providing insurance on single-family or multifamily covered securities prior to the satisfaction of all minimum criteria.

The prohibition on the enterprises engaging in new business must be certified by the FMIC Board of Directors within 5 years of enactment. If the Board of Directors is unable to make this certification within 5 years, it may extend this deadline several times, through extensions with heightened approval standards.

**Sec.602. Transition of the housing finance system.**

The Transition Committee must develop a comprehensive transition plan within 12 months of enactment to facilitate an orderly transition to the new housing finance system. Within 12 months of submission of the transition plan, and annually thereafter, FMIC must update the transition plan for Congress.

The transition plan must include:

- Estimated timeframes by which to achieve the minimum housing finance system criteria within 5 years of enactment.
- Detailed actions that FMIC will take to achieve the minimum housing finance system criteria.
- Estimated timeframes and detailed actions that FMIC and FHFA will take to provide an orderly wind down of the enterprises.
- Detailed plans for utilizing any intellectual property, technology, infrastructure, or process of the enterprises.
- Descriptions of and updates on the ongoing operations of FMIC, including FHFA.
- Estimated timeframes and detailed plans for establishing a multifamily covered securities market.
- Estimated timeframes and detailed plans for establishing a standardized security issued through the Securitization Platform for the single-family covered securities market.
- Detailed plans for increasing the level of credit risk-sharing in the secondary mortgage market.

FMIC must consider the impact of various transition options with respect to housing prices and affordability, the effectiveness of consumer protections in the housing market, the volume and characteristics of mortgage loan originations, the condition of the rental housing market, small lender participation in the secondary mortgage market, access to credit in rural and underserved communities, competition among market participants, the condition of the multifamily housing market, innovation among secondary market participants, taxpayer repayment, and private capital in the secondary mortgage market.

**Sec.603. Resolution authority; technical amendments.**

On the system certification date, FMIC assumes FHFA's resolution authority.

**Sec.604. Wind down.**

The FHFA Director, in consultation with FMIC, may take actions and prescribe regulations and procedures as are necessary to wind down the operations of the enterprises in an orderly manner. However, the sale, transfer, exchange, or other disposition of any asset subject to the wind down of the enterprises is prohibited if FMIC determines that such sale, transfer, exchange, or disposition would materially interfere with its ability to carry out the requirements of this Act. Six months following enactment, FMIC may take actions and prescribe regulations and procedures as are necessary to wind down the operations of the enterprises in an orderly manner.

Within nine months of enactment, each enterprise must develop a resolution plan in order to facilitate an orderly transition to the new housing finance system. After reviewing these resolution plans, FMIC is required to conduct a valuation study of each enterprise's business segments that may be sold for value.

Upon the system certification date, Fannie Mae and Freddie Mac would be prohibited from conducting new business.

The prohibition on engaging in new business does not affect the rights and obligations of holders of outstanding debt obligations of the enterprises or mortgage-backed securities guaranteed by the enterprises. The full faith and credit of the United States is pledged to the payment of all amounts required under these debt obligations or mortgage-backed securities.

Provisions of the Senior Preferred Stock Purchase Agreement relating to dividend payment dates, periods, rates, and amounts shall not be amended, restated, or otherwise changed to reduce the rate or amount of dividends in effect pursuant to such Agreement as of the Third Amendment to such Agreement dated August 17, 2012, except that any amendment to such Agreement to facilitate the sale of assets of the enterprises to facilitate compliance

with the resolution plan requirements is permitted, and will remain in effect until the guarantee obligations of the enterprises are fully extinguished.

The charters of the enterprises are revoked upon the extinguishing of all guarantee obligations of the enterprises, with the exception of the provisions in the Fannie Mae charter that relate to Ginnie Mae. Beginning six months after enactment, FMIC may, upon application and in exchange for a fee, provide insurance on outstanding mortgage-backed securities issued by the enterprises. FMIC may also facilitate the exchange of mortgage-backed securities issued by either enterprise for covered securities, the exchange of mortgage-backed securities issued by one enterprise for those of the other enterprise, issuance of mortgage-backed securities by both enterprises through a single issuer, or issuance of real estate mortgage investment conduit securities consisting of mortgage-backed securities issued by the enterprises. Within six months of enactment, the FHFA Director is required to submit a study considering the feasibility of these actions to FMIC, the Senate Committee on Banking, Housing, and Urban Affairs, and the House Committee on Financial Services.

The FHFA Director must establish and execute plans to manage enterprise assets toward the liquidation of liabilities and provide for an equitable division, distribution, and liquidation of the assets and liabilities of an enterprise, including any infrastructure, property, including intellectual property, platforms, or any other thing or object of value. These plans may include the establishment of:

- a holding corporation to wind down the enterprises;
- one or more trusts to transfer outstanding enterprise debt obligations or outstanding mortgages held to collateralize mortgage-backed securities guaranteed by the enterprises; or
- one or more subsidiaries or joint ventures with private entities to facilitate an orderly wind down of the enterprises.

Any holding company, trust, subsidiary, or joint venture sold as a going concern may be utilized to facilitate the formation of a small lender mutual, an approved guarantor, an approved multifamily guarantor, an approved aggregator, or the Securitization Platform.

The wind down of each enterprise must be managed by FHFA to obtain resolution that maximizes the return for taxpayers, so long as this is consistent with the other goals of an orderly transition to a new housing finance system.

#### **Sec.605. Portfolio reduction.**

Each enterprise is not permitted to own single-family mortgage loan assets in excess of 85 percent of the aggregate amount of the single-family mortgage loan assets that the enterprise was permitted to own as of December 31 of the immediately preceding calendar year. By the date on which the enterprises are prohibited from engaging in new business, FMIC must establish an allowable amount of enterprise-owned single-family mortgage loan assets to facilitate the orderly wind down of the enterprises and appropriate loss mitigation on any legacy guarantees of the enterprises.

#### **Sec.606. Oversight of transition of the housing finance system.**

Beginning six months after enactment through the system certification date, the FMIC Chairperson must testify annually before the Senate Committee on Banking, Housing, and Urban Affairs and the House Committee on Financial Services on the progress made in carrying out the transition.

Beginning six months after enactment through the system certification date, the FMIC Inspector General must submit an annual report on the status of the transition and testify on this report annually to the Senate Committee on Banking, Housing, and Urban Affairs and the House Committee on Financial Services.

Within 18 months of the date on which the enterprises are prohibited from engaging in new business, the GAO must conduct a study and submit a report which reviews all property of the enterprises that has been sold, transferred, or licensed for value, the number and market share of each type of approved entity, and the amount of

any taxpayer repayment to the Senate Committee on Banking, Housing, and Urban Affairs and the House Committee on Financial Services.

**Sec.607. Authority to establish provisional standards.**

FMIC may establish provisional standards for the approval of guarantors, multifamily guarantors, aggregators, private mortgage insurers, and servicers to ensure the sufficient participation of financially sound entities in the housing finance system.

These provisional standards may be established during the transition to the new housing finance system and during periods when FMIC's unusual and exigent powers are exercised. When provisional standards are in effect, FMIC maintains all oversight and enforcement authorities with regard to approved entities.

The 10 percent capital requirement for approved guarantors takes effect 10 years after the date on which the enterprises are prohibited from engaging in new business. The phase-in of this capital standard for approved guarantors will occur in equal annual increments.

**Sec.608. Initial fund level for the Mortgage Insurance Fund.**

FMIC must endeavor to ensure that by the system certification date the MIF attains a reserve ratio of 0.75 percent of the sum of the outstanding principal balance that FMIC expects to be insured five years after the system certification date. This initial funding of the MIF will be provided by assessments on the enterprises.

**Sec.609. GAO report on full privatization of secondary mortgage market.**

Within 8 years of enactment, the GAO is required to submit a report to Congress on the feasibility of transitioning to and creating a fully privatized secondary mortgage market, including recommendations, and conduct an assessment of the cost of mortgage credit and the impact on the economy if the secondary mortgage market is fully privatized.

Within 6 months of the date on which the GAO report is submitted, FMIC is required to submit to Congress a description of the legislative, administrative, and regulatory actions necessary to implement the recommendations of the report.

## **TITLE VII—MULTIFAMILY**

**Sec.701. Establishment of multifamily subsidiaries.**

To facilitate the transition to the new multifamily housing finance system, this section requires the establishment of multifamily subsidiaries within each of the enterprises. Not later than 180 days after enactment, the enterprises must develop a plan to establish within each company, a multifamily subsidiary. The multifamily subsidiaries will be established not later than 1 year after enactment. The Delegated Underwriting and Servicing Lender Program (DUS) as well as the Capital Market Execution Program Series K Structured 2Pass-Through Certificates (Series K) will continue to operate, as well as any other programs that support the enterprises' provision of liquidity to the multifamily housing market.

**Sec.702. Disposition of multifamily businesses.**

This section provides that the Corporation, on or before the System Certification date, may manage the sale, transfer, or disposition for value of property of the multifamily businesses of the GSEs. FHFA must manage any disposition in a manner consistent with establishment of a well-functioning, competitive multifamily market.

**Sec.703. Approval and supervision of multifamily guarantors.**

This section outlines the standards, application and approval process for multifamily guarantors, as well as oversight and enforcement provisions. In addition to providing guarantees of covered multifamily securities, multifamily guarantors will also have the ability to issue covered multifamily securities. Multifamily guarantors will be evaluated for approval on a number of criteria, including financial condition, character and fitness, capacity to manage counterparties and take the first-loss position or transfer credit risk, and capacity to meet the

requirements of the Act. Multifamily guarantors will be able to share credit risk, including by selling a first loss position. The DUS and Series K products will be approved credit risk sharing mechanisms. Approved multifamily guarantors must maintain approval status and are required to hold 10 percent capital.

**Sec.704. Multifamily housing requirement.**

Each enterprise and approved multifamily guarantor must ensure that 60 percent of the rental housing units financed must be affordable to low-income families (families with incomes at or below 80 percent of Area Median Income) at origination. The Corporation has the authority to suspend or adjust the requirement if economic or market conditions require such action. Any such suspension or adjustment must be published and reviewed not less than annually.

**Sec.705. Establishment of small multifamily property program.**

This section mandates that the Corporation administer a pilot program through the Office of Multifamily Housing to test and assess methods or products designed to increase secondary mortgage market access for multifamily properties with 50 or fewer units. Funding for such a program may be allocated from the Market Access Fund. The results of the pilot program shall be made publicly available.

**Sec.706. Multifamily housing study.**

The Corporation shall conduct a study regarding the capabilities of the Federal Home Loan Banks to expand their Acquired Member Assets (“AMA”) programs to eligible multifamily mortgage loans.

**Sec.707. Multifamily platform study.**

This section outlines a study regarding the capacity and need for a common securitization platform in the multifamily housing finance market. The study should take place no later than 18 months after the system certification date.

## **TITLE VIII—GENERAL PROVISIONS**

**Sec.801.Rule of construction.**

This section clarifies that this Act does not prohibit re-securitizations of portions of FMIC-backed securities.

**Sec.802. Severability.**

This section ensures that the rest of the Act will not be affected if one portion of this Act is invalidated.

**Sec.803. Transfer notification under TILA.**

This section amends the Truth in Lending Act’s (TILA) requirement to notify borrowers when the owner of their mortgage loan changes to include a requirement to notify borrowers when the servicer of their mortgage loan changes as well.

TILA is also amended so that a borrower may not be charged a late fee if the borrower sent his or her monthly mortgage payment before the due date but to the old servicer of his or her mortgage loan, so long as the payment was made within 60 days of the effective date for the transfer of the servicing rights for the borrower’s mortgage.

**Sec.804. Determination of budgetary effects.**

This section specifies the budgetary treatment of this Act.